continued and fresh agreements were made for their supply to the company. The telephone service was also put into the name of the company and a signboard bearing the company's name was erected outside the premises. Receipts, bills and invoices were issued in the name of the company. On November 1, 1969, a cheque drawn by the company was tendered to the landlord as payment for rent of the premises. This brought to the knowledge of the landlord that the company was occupying the premises, and on December 24, 1969, the landlord commenced an action in the High Court in Malaya claiming possession of the premises for breach of the covenant not to part with possession naming the tenant and the company as defendants. Both defendants denied any breach of covenant. The trial Judge found that the tenant had parted with possession in breach of covenant to the company and made an order for delivery of possession to the landlord. The tenant and the company appealed to the Federal Court which allowed their appeals holding that although let into occupation by leave and licence of the tenant the company had not been given possession. The Federal Court further held that the case was one in which equitable relief from forfeiture should be granted. The landlord appealed to the Privy Council. It was held that the proper conclusion to be drawn from the evidence was that the tenant had not merely permitted the company to use the premises but had parted with possession of the premises to the company, and, accordingly, he was in breach of covenant. However, the Privy Council held that the Federal Court had properly exercised its jurisdiction under Section 237 of the National Land Code to grant such relief and dismissed the appeal.

The Privy Council made a distinction between the case before them and the two cases of *Peebles* v. *Crosthwaite* and *Chaplin* v. *Smith*. In delivering the judgment of the Board, Sir Harry Gibbs said (page 256):

"However, the question whether the first respondent has parted with possession must depend upon all the facts and circumstances of the present case which in their Lordships' opinion are distinguishable from those of the cases cited. Some of the evidence – as to the erection of the signboard, the transfer of the electricity, water supply and telephone and the issue of receipts, bills and invoices in the name of the second respondent – is equivocal and is quite consistent with a conclusion that although the second respondent occupied the premises the first respondent retained possession. However the fact that the second respondent tendered its own cheque in payment of the rent is some evidence that the second respondent regarded itself and was regarded by the first respondent, as having possession of the premises."

The Privy Council concluded that there had been a parting of possession although the tenant held more than 50% of the total paid-up capital of the company.

In my opinion the proper conclusion to be drawn from the whole of the evidence in this case is that the appellant did part with possession of the said premises. The trial Judge was therefore correct in his conclusion that the evidence established a breach of the covenant.

It is submitted by counsel for the appellant that it is unreasonable for the trial Judge to make an order for possession against the appellant. In my view there is no substance in this submission. The appellant had made an application to assign the tenancy and that had been refused by the landlord. Inspite of that the appellant proceeded to sell his business, which involved the possession of the said premises, for a very large sum. There is no evidence that the refusal of the landlords to give their consent was unreasonable. In my view the District Judge was right in his decision to make an order for possession against the appellant.

In the result this appeal fails and is dismissed with costs.

Appeal dismissed.

Solicitors: *Lim Teck Hui & Co.; Kirpal Singh & Co.*

THE "VIRGINIA RHEA";

CHINA STEEL CORP. & ANOR. v. M.V. "VIRGINIA RHEA", OWNERS OF

[A.C.J. (Rajah J.) October 1, 1982]

[Singapore – Admiralty in Rem No. 717 of 1980]

Practice & Procedure – Amendment to Indorsement of Claim on Writ – Amendment to include another bill of lading "KKS33" – Application to set aside – Whether amendment amounted to a new cause of action – Whether it arises out of the same facts as the cause already pleaded – R.S.C. 1970, O. 20 rr. 1 & 5.

This was an appeal from the learned Registrar's decision in which he dismissed the defendants' application to set aside the plaintiffs' amendment without leave dated November 21, 1981 to the Indorsement of Claim on the Writ.

The facts revealed that on October 22, 1980, the plaintiffs issued a Writ against the owners of the vessels "Virginia Rhea" "Virginia Sun", and "Mont Pioneer" ex "Virginia Sun". The claim of the plaintiffs therein was as owners of consignees of goods shipped on board the vessel "Virginia Rhea" or alternatively as indorsees or holders for value of 4 bills of lading issued in respect thereof. The Writ was not served as none of the said ships had come into the Port of Singapore. The validity of the Writ was extended by an Order of Court dated October 27, 1981 for a period of 12 months from October 22, 1981. On November 21, 1981 the plaintiffs amended the Indorsement of Claim. The amendment material in this appeal were the inserted words "and KKS33".

The vessel "Virginia Rhea" was arrested on March 15, 1982. She was released on the following day. On March 29, 1982 the defendants entered a conditional appearance. On April 10, 1982 the defendants took out a Summons seeking to delete the said amendments effected by the plaintiffs.

The 4 bills of lading mentioned in the original Indorsement of Claim were KKS1, KKS3, KKS31 and KKS32. The amendment complained of sought to bring in yet another bill of lading numbered KKS33. When the amendment was effected by the plaintiffs on November 21, 1981, limitation had already set in against KKS33.

The defendants contended that by introducing the amendment a new cause of action was being introduced into the litigation and that such an introduction had the effect of depriving them of a legitimate defence.

Held, allowing the defendants' appeal: (1) the introduction of the 5th bill of lading, KKS33, by way of amendment, brings yet another cause of action as indorsees or holders for value of yet another bill of lading in respect of which the plaintiffs could have maintained a separate action but had not;

(2) the new cause of action did not arise out of the same facts or substantially the same facts as any of the causes of action relied upon by the plaintiffs in their Writ. The facts relating to the claim under KKS33 were entirely separate from and had no bearing whatsoever on any of the claims under the other 4 bills of lading.

Cases referred to:

(1) *Sterman* v. *E.W. & W.J. Moore Ltd. (a firm)* [1970] 1 All.E.R. 581 C.A.

(2) *Brickfields Properties Ltd.* v. *Newton* [1971] 3 All. E.R. 328, 332

ADMIRALTY IN REM.

G. Pannirselvam for the defendants/applicants.

Miss Vivian Ang for the plaintiffs/respondents.

Rajah J.: This is an appeal from the learned Registrar's decision in which he dismissed the defendants' application to set aside the plaintiffs' amendment without leave (Order 20 Rule 1) dated November 21, 1981 to the Indorsement of Claim on the Writ herein. The amendment material to this appeal are the inserted words "and KKS33".

The facts relevant to this appeal are not in dispute. On October 22, 1980 the plaintiffs issued a writ *in Rem* in Suit No. 717 of 1980 against the owners of the ships or vessels "VIRGINIA RHEA", "VIRGINIA SUN", and "MONT PIONEER" ex "VIRGINIA SUN".. The claim of the plaintiffs therein was as owners or consignees of goods shipped on board the vessel "VIRGINIA RHEA" or alternatively as indorsees or holders for value of 4 bills of lading issued in respect thereof. The Writ was not served as none of the ships mentioned in the Writ had come into the Port of Singapore. The validity of the Writ was extended by the Order of Court dated October 27, 1981 for a period of 12 months from October 22, 1981, an application therefor having been made on October 2nd 1981. On November 21, 1981 the plaintiffs amended the Indorsement of Claim as stated.

On March 13, 1982 the plaintiffs obtained an Order of Court to amend the summons further by deleting all the names of the vessels therein mentioned other than "VIRGINIA RHEA" with consequential amendments of the Writ. On March 15, 1982 the vessel "VIRGINIA RHEA" was arrested under the Writ. She was released on the following day.

On March 29, 1982 the defendants, through their solicitors, entered a conditional appearance without prejudice to an application to set aside the Writ or service thereof. On April 10, 1982 the defendants took out a Summons seeking to delete the amendments referred to above effected by the plaintiffs on November 21, 1981. It was in these circumstances that the matter went up before the Registrar when he made the order now complained of.

The 4 bills of lading mentioned in the original Indorsement of Claim are numbered KKS1, KKS3. KKS31 and KKS32. The amendment complained of sought to bring in yet another bill of lading numbered KKS33. It is not in dispute that when the amendment was effected by the plaintiffs on November 21, 1981 limitation had already set in against KKS33.

Shortly, the position taken by the defendants in their appeal is (1) that in so far as KKS33 is concerned the period of limitation had set in some time prior to November 21, 1981 (not denied by

the plaintiffs), (2) that the first amendment effected by the plaintiffs was not in order and (3) that such amendment should therefore be struck out. They contended that by introducing the amendment a new cause of action was being introduced into the litigation and that such an introduction had the effect of depriving them of a legitimate defence. The plaintiffs' answer to this was that Order 20 Rule 5 enabled them to do exactly what the defendants said could not be done. They contend (1) that the amendment is part and parcel of a cause or causes of action already pleaded and for this they rely on Rule 5(1) of Order 20; (2) that, even if it were a new cause of action, as alleged by the defendants, then they would rely on Order 20 Rules 5(2) and 5(5); and (3) that, should they fail under (1) and (2), then the wording of Order 20 Rule 5(1) is more embracing than sub-Rules (2), (3), (4) and (5) and confers on the Court such a wide discretion as would enable it, on the particular facts of the instant case, to give them the relief they had sought.

The first question for decision appears to be, is the amendment sought part and parcel of a cause or causes of action already set out in the Indorsement of Claim (here the plaintiffs rely on *Sterman* v. *E.W. & W.J. Moore Ltd. (a firm)*[1]) or is it a new cause of action, and if so, then does it arise out of the same facts or substantially the same facts as the cause or causes of action already pleaded. (Here the plaintiffs rely on *Brickfields Properties Ltd.* v. *Newton*[2]).

It will be remembered that in the original Indorsement of Claim the plaintiffs were suing as owners and/or consignees of various consignments of cargoes or as indorsees or holders for value of Bills of Lading numbered KKS1, KKS3,, KKS31 and KKS32. It seems to me that the claim of the plaintiffs against the defendants is in the alternative. The first claim is that the plaintiffs are suing as owners and/or consignees of various consignments of cargoes against the carriers, the defendants, for damages for breach of contract and/or breach of duty and/or negligence of the defendants, their servants or agents in or about the loading, handling, stowage, care, custody, carriage and discharge thereof resulting in damage to and loss of the said goods. The alternative claim is that the plaintiffs are suing the defendants as indorsees or holders of the said 4 bills. It will be noted that under the said 4 bills of lading the consignees were either the first or the second plaintiffs whereas the shippers in each case were different persons. In the circumstances of this case the plaintiffs had 4 causes of action as owners and/or consignees of the various consignments of cargoes or alternatively another 4 causes of action as indorsees or holders for value of the said 4 bills of lading. They could have brought separate actions in respect of each of the said 4 bills of lading and this has been so acknowledged by the plaintiffs. The introduction of the 5th bill of lading, namely, KKS33, by way of amendment, to my mind, brings in yet another cause of action as indorsees or holders for value of yet another bill of lading in respect of which they could have maintained a separate action but had not. It seems to me therefore that the first amendment is not in furtherance of a necessary part of the original claims or causes of action of the plaintiffs. The first amendment seeks to bring in an entirely new matter which is in no way related to the 4 causes of action relating to the 4 bills of lading joined in one Writ by virtue of Order 15(1) of the Rules of the Supreme Court.

The second contention of the defendants – Order 20 Rule 5(5). The crucial question here is whether the new cause of action arises out of the same facts or of substantially the same facts as any of the cause or causes of action in respect of which relief had already been claimed by the plaintiffs. Such is not the case here. The new cause of action does not arise out of the same facts or substantially the same facts as any of the causes of action relied upon by the plaintiffs in their Writ. The facts which relate to a claim under KKS33 are entirely separate from and has no bearing whatsoever on any of the claims under the other four bills of lading.

The plaintiffs placed a great deal of reliance on *Brickfield Properties Ltd.* v. *Newton.* The case here arose out of the employment of an architect by the owners for the design, building and supervision of six blocks of flats. The Writ in that action reads:–

> "The Plaintiffs' claim is for damages for negligence and breach of duty by the defendant as an architect employed by the Plaintiffs in connection with the building of six blocks of flats containing 165 flats situated at Ruislip Road, Ealing in the County of Greater London ..."

If the words "design and" had appeared between the words "the" and "building" as appear in line 5 of the Writ as above the matter would have been perfectly all right and the Statement of Claim as framed could not have been objected to. It was this partial and material omission that

the Court allowed to be rectified. In my view, the amendment sought in that case was an amendment on the same facts to allege negligence in design as well as supervision of the building contract. Such is not the case before me.

The third contention of the plaintiffs – Order 20 Rule 1. On the interpretation of Order 20 Rule 5 the 1975 edition of *Bullen & Leake* and *Jacob's* Precedents of Pleadings has this to say:–

"A marked difference of judicial opinion has developed as to the effect of the new provisions of Ord. 20 r. 5. The prevailing judicial view is that the provisions of this Rule, which permit amendments to be made after the expiry of the current period of limitation only empowered the court to grant such amendments in the three classes of cases specified in paras. (3), (4) and (5) of the rule, and have not imported any general relaxation of the former practice regulating the power to allow such amendments but there is a strong minority judicial view to the contrary. This difference of judicial opinion remains to be resolved by an authoritative decision of the House of Lords, or preferably by legislation." (Pages 133, 134, Note 1)

I am of the view that the prevailing judicial view is the proper one. For these reasons the appeal is allowed with costs here and below.

Appeal allowed.

Solicitors: *Drew & Napier; Godwin & Co.*

RE NG KONG YAU

[O.C.J. (Rajah J.) December 8, 1982]
[Singapore – Originating Motion No. 12 of 1982]

Accountant – Disciplinary action against accountant living and working abroad – Accountant member of Singapore Society of Accountants – Disciplinary action by Society – Jurisdiction – Whether Society has control over professional member practising abroad – Accountants Act (Cap. 212), s. 234(1)(b).

The applicant in this case was a practising public accountant and as such, was subject to the provisions of the Accountants Act (Cap. 212), the By-Laws of the Singapore Society of Accountants Act (Cap. 212) and the By-Laws of the Singapore Society of Accountants (the Society). He commenced practice in Singapore as a public accountant in 1965. In 1977, he concurrently commenced practice in Hong Kong. In 1979 he admitted into the firm two Singapore public accountants, David Chan and Roland Ma.

At the hearing of the Disciplinary Committee held on February 15, 1982, the applicant was charged for sending to the said David Chan and Roland Ma a letter of "Mutual Co-operation" in contravention of the Singapore Society of Accountants (Practice & Etiquette of Accountants) By-Laws 1966, and thereby committing an act discreditable within the meaning of s. 34(1)(b) of the Accountant Act (Cap. 212).

The applicant contended that as he lived and worked in Hong Kong he was not professionally accountable to the Society.

Held, dismissing the application: (1) on the facts of the instant case, the Society has not only statutory but territorial jurisdication over the applicant. Under the Accountants Act, the Society has control over the professional conduct of all its members, whether such conduct be within or outside Singapore. It is a purely domestic matter of the Society deciding who are fit to continue to be members of it and not a complex question of Conflict of Laws;

(2) the Disciplinary Committee was therefore right in ruling that it had jurisdiction to go into the charges against the applicant.

Cases referred to:

(1) *Treacy* v. *Director of Public Prosecutions* [1971] A.C. 537
(2) *Cordova Land Co. Ltd.* v. *Victor Bros. Inc.* [1966] 1 W.L.R. 793
(3) *George Monro Ltd.* v. *American Cyanamid & Chemical Corporation* [1944] K.B. 432

ORIGINATING MOTION.

Harry Elias (*Teddy Lim* with him) for the applicant.

Lee Han Yang (*Lee Han Tiong* with him) for the respondents.

Cur Adv. Vult.

Rajah J.: The Applicant, Ng Kong Yau, in this Originating Motion is a practising public accountant and as such is subject to the provisions, including those of discipline, of the Accountants Act (Cap. 212) (the Act) and of the By-Laws of the Singapore Society of Accountants (the Society) made under section 31 of the Act and known as the Singapore Society of Accountants (Practice and Etiquette of Accountants) By-Laws, 1966. He commenced practice in Singapore as a public accountant in 1965 under the name or style of Ng Kong Yau & Co. (the Firm). In 1977 the Applicant concurrently commenced practice in the Colony of Hong Kong as a certified public accountant under the name or style of Lawrence Wong & Co. In 1979 he admitted into the Firm two other Singapore public accountants namely David Chan Kong Yuen (David Chan) and Roland Ma Koh Eng (Roland Ma).